

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-577

MOTION FOR REMEDY

NOW COMES the accused, Mr. Adam Montgomery, by and through counsel, Caroline L. Smith and Robin Davis, Public Defenders, and respectfully requests this Honorable Court provide the defendant a remedy for new investigation and discovery in this matter:

1. Mr. Adam Montgomery was scheduled for jury selection November 9, 2022 on multiple charges of Armed Career Criminal, Felon in Possession, Theft and Receiving Stolen Property.
2. Mr. Montgomery was originally arraigned on these matters on April 6, 2022. The State subsequently reindicted to include additional predicate offenses in the felon in possession and armed career criminal charges; however, the essential charges were the same.
3. This matter was originally scheduled for trial in November 2022 but was continued in October 2022 due to the untimely disclosure of a new statement of Kayla Montgomery that the State had obtained over 4 months prior to disclosure. Mr. Montgomery filed a Motion to Preclude the witness based on the delayed disclosure of statements because the new statement was substantially different from the discovery previously disclosed. The Court denied the Motion to Preclude but granted a continuance to the defendant due to the delayed disclosure.
4. Trial in this matter was rescheduled to May 31, 2023.

Denied as moot. At the hearing on 5/23/2023 the State informed the defendant that it does not intend to call Dawley as a witness. Defendant has agreed the trial can go forward as scheduled. SO ORDERED.



Honorable Amy B. Messer

May 24, 2023

Clerk's Notice of Decision
Document Sent to Parties
on 05/24/2023

5. Additional discovery continues to come to defense counsel from the State.
6. Motions in *Limine* were due May 1, 2023.
7. On or around April 21, 2023, the State submitted a request for DNA testing of DNA from the missing .380 pistol recovered in Massachusetts in March 2021. The results were provided to defense counsel on or about May 15, 2023.
8. On April 26, 2023, the State amended its witness list to include Michael Harju. A CD of Mr. Harju's April 17, 2023 interview was provided to defense counsel on or about April 25, 2023, entitled CD#37 221-18997 JD97; however, defense counsel had not yet reviewed the CD and did not know who Mr. Harju was until the State advised defense counsel that CD 37 was an interview with Mr. Harju.
9. Mr. Harju's criminal record from Hillsborough County House of Corrections is available to defense counsel through the portal. However, Mr. Harju stated he was from Massachusetts. The State has not provided a criminal record for Mr. Harju for defense counsel to be able to prepare the appropriate Rule 609 or Impeachment motion.
10. On Saturday, May 20, 2023, the State informed defense counsel, via e-mail, of a new interview with an incarcerated inmate at the Hillsborough County House of Corrections. It appears that a Mr. Elias Dawley was at some point housed near Mr. Montgomery and claims to have statements from Mr. Montgomery during this time.
11. According to the e-mail disclosure by the State, police conducted a recorded interview with Mr. Dawley on Thursday, May 18, 2023. Mr. Dawley's attorney was present. Accordingly, it appears that this interview was scheduled sometime in advance. Defense counsel has not received a report nor a recording of the interview but according to the e-mail, Mr. Dawley claims Mr. Montgomery made statements to him regarding firearms as well as the

investigation into the death of Harmony Montgomery. It also appears that the State will be conducting further investigation based on the information received. The State indicated it would provide the recording as soon as it received the recording.

12. On information and belief, Mr. Dawley and Mr. Montgomery had one encounter while housed at the Hillsborough County House of Corrections. That encounter may have been witnessed but defense counsel has not had an opportunity to investigate – especially since defense counsel does not have details of the interview. In addition, it appears the police will be conducting further investigation based upon Mr. Dawley’s statements. The outcome of those further investigations may or may not provide evidence regarding Mr. Dawley’s credibility.
13. This matter is now 10 days before jury selection. Motions *in Limine* are still being argued and ruled on. There are significant preparations remaining on this case without new information continuing to come from the State. In short, defense counsel does not have sufficient time to prepare to meet any new allegations that Mr. Montgomery made statements to another inmate.
14. This case has been pending since April 2022. The defendant reluctantly requested the continuance of the November trial because of the delayed disclosure of the June 3rd, 2022 statement of Kayla Montgomery. The late results of new investigations, at the eve of trial, substantially affect the defense in this case in a very detrimental manner. The defendant does not have time to address, investigate, or challenge the new information and allegations.

Wherefore, Mr. Montgomery respectfully requests this Honorable Court:

- a) Preclude the testimony of Elias Dawley and Michael Harju;

- b) Preclude the testimony of Elias Dawley; or,
- c) Continue trial in this matter until August 2023; and,
- d) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

/s/ Caroline L. Smith
Caroline L. Smith, Esq.
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N.H. Public Defender
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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this Motion has been forwarded to the Office of the Attorney General on this 22nd day of May, 2023.

/s/ Caroline L. Smith
Caroline L. Smith, Esq.